

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 19

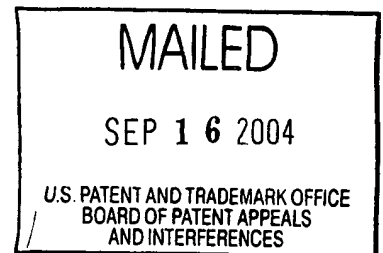
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES D. SPURGEON

Appeal No. 2004-1601
Application 09/732,391

ON BRIEF



Before FRANKFORT, STAAB, and McQUADE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

REMAND TO THE EXAMINER

James D. Spurgeon originally took this appeal from the final rejection (Paper No. 11) of claims 1, 2, 4, 5, 7, 12 through 14 and 18 through 24, all of the claims pending in the application. Upon consideration of the appellant's main brief (Paper No. 13), the examiner issued an Office action (Paper No. 14) reopening

Appeal No. 2004-1601
Application 09/732,391

prosecution and entering superseding rejections of all of the claims. Pursuant to 37 CFR § 1.193(b)(2)(ii), the appellants then filed a supplemental brief (Paper No. 15) and requested that the appeal be reinstated. Implicitly granting the request, the examiner entered an answer (Paper No. 16) and forwarded the application to this Board for review of the new rejections of claims 1, 2, 4, 5, 7, 12 through 14 and 18 through 24.

Before taking up the appeal on its merits, we find it necessary to remand the application to the examiner under the authority of 37 CFR § 41.50(a)(1) and MPEP § 1211 to resolve the following matter.

On March 24, 2004, the appellant filed a reply brief (Paper No. 18) in response to the examiner's answer. The record, however, does not indicate that the examiner ever considered this submission. On remand, the examiner is directed to rectify this situation by treating the reply brief in accordance with the practice set forth in 37 CFR § 41.43 and MPEP § 1208.03.

Appeal No. 2004-1601
Application 09/732,391

This application, by virtue of its "special" status, requires immediate action, see MPEP § 708.01. Further, it is important that the Board of Patent Appeals and Interference be promptly informed of any action affecting the appeal in this case.

REMANDED



CHARLES E. FRANKFORT)
Administrative Patent Judge)

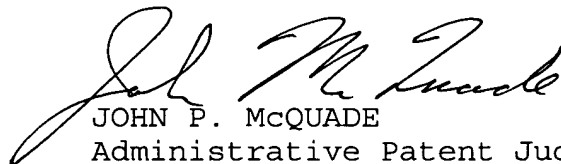


LAWRENCE J. STAAB)
Administrative Patent Judge)

BOARD OF PATENT

APPEALS AND

INTERFERENCES



JOHN P. MCQUADE)
Administrative Patent Judge)

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Appeal No. 2004-1601
Application 09/732,391

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